

TEACHERS' RETIREMENT BOARD

INVESTMENT COMMITTEE

OPEN SESSION

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SUBJECT: Quarterly Litigation Report                      ITEM NUMBER: 13

ATTACHMENT(S): Yes

ACTION: \_\_\_\_\_                      DATE OF MEETING: April 1, 1998

INFORMATION: X                      PRESENTER: Mr. Waddell

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The Quarterly Litigation Report has been prepared as directed by the Investment Committee. Non-investment litigation will be reported in the Retirement Board meeting.

**STRS LITIGATION REPORT - APRIL 1998**

**PROPERTY ADVISOR: Westmark Realty Advisors**

**Santa Fe Corporate Center**

**STRS v. Jaeco** (1995) STRS Counsel: Louis Levinson. Breach of lease by tenant. Threatened eviction resulted in majority of arrearages paid within 60 day period. Tenant vacated building July 20, 1995. Advisor has submitted recommendation regarding settlement. Advisor in process of collecting money judgment.

**Wilshire Landmark I**

**Wang v. STRS** (1994) STRS Counsel: Haight, Brown, & Bonesteel, legal counsel retained by insurance company. Alleged elevator injury at property. Attorneys of insurance company have responded to complaint.

**STRS v. Hamburger Hamlet** (1995) STRS Counsel: Cox, Castle & Nicholson. Tenant has contacted advisor stating they would not be able to make payment due to financial problems. Tenant has filed bankruptcy. Claims have been filed on behalf of STRS in the amount of \$11,388.77 and is being monitored by counsel. Tenant has rejected lease in Bankruptcy and will vacate premises. Landlord has demanded that tenant remove personal property or the property will be auctioned off. Bankruptcy court settlement offered by tenant to creditors for \$.10 on the dollar.

**Northrop Plaza I**

**Sanders v. STRS, et al.** (1994) STRS Counsel: Haight, Brown and Bonesteel. Alleged injury as a result of elevator malfunction. Insurance company has retained counsel on behalf of STRS. Response to complaint has been filed. Plaintiff's deposition taken March 2, 1995. Millar Elevator (cross-defendant) has filed a governmental claim against STRS with the Board of Control. Upon rejection Millar Elevator will file a cross-complaint against STRS. Court has ordered mediation set before April 1996. Millar Elevator has accepted STRS tender of defense and agreed to indemnify STRS. Trial presently set in Santa Monica Superior Court.

**STRS v. Beverly Hills Management** (1997) STRS Counsel: Cox, Castle & Nicholson. Landlord initiated action due to nonpayment of rent by tenant. Tenant counter-claimed that odor from other tenant's kitchen interfered with tenancy. Tenant abandoned premises and matter will be resolved via mediation.

**STRS v. Express Communications** (1995) STRS Counsel: Cox, Castle & Nicholson. Tenant breached lease. STRS filed unlawful detainer complaint resulting in eviction of tenant on June 15, 1995. Advisor will proceed with collection of monetary judgment against tenant as guarantor under lease.

**STRS v. Sun-Rise Tae Kwan Do** (1997) STRS Counsel: Cox, Castle & Nicholson. Tenant breached lease resulting in a service by landlord of a Notice to Pay or Quit on tenant. Tenant has filed a Chapter 7 Bankruptcy. Legal counsel has filed proof of claim on behalf of STRS.

**Chudnousky v. STRS** (1995) STRS Counsel: Wilner, Klein & Siegal. Insurance carrier retained counsel on behalf of STRS. Plaintiff alleges she fell over a brick in plaza and broke her hip. Claim being processed through insurance carrier. Lawsuit was filed and served on STRS in January 1997. Court has requested parties enter into mediation which is scheduled for October 8, 1997. Plaintiff has offered to settle case for \$75,000. The mediation hearing resulted in a \$20,000 settlement offer to plaintiff to settle case.

**STRS v. Kerr Group** (1997) STRS Counsel: Cox, Castle & Nicholson. Tenant has informed Advisor Westmark that it intends to file bankruptcy and has withheld February rent. STRS filed an unlawful detainer action on February 11, 1997 and succeeded in regaining possession of space. Analysis being performed by advisor whether to seek monetary judgment for breach of contract. Settlement recommended by advisor was brought before STRS Investment Committee which approved settlement. Money has been placed in a trust account and settlement documents are being circulated for signature. All documents have been signed and matter resolved. Case closed.

#### **Rancho Pacifica**

**STRS v. Inter Office Holding** (1997) STRS Counsel: Cox, Castle & Nicholson. Tenant has breached lease and filed for business reorganization under Chapter 11 of Bankruptcy Code. Tenant has filed motion to extend lease which is scheduled to terminate in June, 1997. Court allowed extension of lease, tenant is current on lease payments. Advisor will continue to monitor, case closed.

**STRS v. Nittok Tile** (1997) STRS Counsel: Cox, Castle & Nicholson. Tenant has abandoned space and filed bankruptcy. STRS has filed a claim with the bankruptcy trustee through its counsel.

**Moscovitch v. STRS, et al.** (1997) No STRS Counsel at this time. Tenant alleges a slip and fall in property claiming floors were over-waxed. Plaintiff has requested payment of \$500.00 for release of claims, the payment of which has been denied.

**PROPERTY ADVISOR: ERE Yarmouth**

**Anaheim Plaza Shopping Center**

**In Re Clothestime** (1995) STRS Counsel: Cox, Castle & Nicholson. Tenant filed bankruptcy on December 9, 1995 but continues to make payment to STRS and occupy space.

**In Re Lingerie Time** (1995) STRS Counsel: Cox, Castle & Nicholson. Tenant is associated with Clothestime and has filed bankruptcy in December 1995. Tenant has vacated space but continues to make lease payments. Space will be re-let by advisor. Bankruptcy continues to be monitored by advisor and STRS Counsel. Reorganization plan has been accepted by creditors and confirmed by court.

**STRS v. Magic Dragon** (1996) STRS Counsel: Cox, Castle & Nicholson. Tenant has defaulted on the payments under the lease. Tenant has made partial payment of arrears which has been accepted by landlord conditional on a reservation of rights to seek possession of the property and a monetary judgment. Tenant had made four successful \$5,000 payments, advisor will continue to monitor payments. Tenant has again defaulted and action has been filed to remove tenant and seek judgment from Lease guarantor.

**STRS v. Chubby's Diner** (1997): STRS Counsel: Cox, Castle & Nicholson. Tenant in default under Lease, has vacated premises and filed Bankruptcy. STRS Counsel has been granted relief from the Bankruptcy Court to proceed with Unlawful Detainer action to secure judgment for arrearage in rent.

**STRS v. Baskin Robbins** (1997): STRS Counsel: Cox, Castle & Nicholson. Tenant has defaulted under lease via non-payment of rent. Unlawful Detainer action was commenced against tenant to regain possession and seek monetary judgment against tenant.

**STRS v. Kenny Rogers Roasters** (1997): Cox, Castle & Nicholson. Tenant is in default of Lease for non-payment of CAM charges and rent. Legal action has been initiated to regain possession of the premises and will seek monetary judgment against franchisee and guarantor Roasters Corporation.

#### **Davies Pacific Center**

**STRS v. Legacy Mortgage** (1977) STRS Counsel; Bendet, Fidell, Sakai & Lee. Tenant breached lease through non-payment of rent. Complaint for possession and monetary judgment has been filed. Stipulated judgment for Writ of Possession and monetary judgment (\$76,987.00) has been signed by tenant. Tenant vacated building and made \$3,000 payment on judgment. Advisor will continue to execute judgment against tenant's assets.

**Joe Pacific Shoe Repairs v. STRS, et al.** (1997) STRS Counsel: to be determined - appointed by insurance company. Plaintiff alleges breach of lease commitment by property manager of STRS. STRS will be indemnified for all costs and judgments by insurance carrier of leasing agent.

**STRS v. GMP Associates** (1997) STRS Counsel: Bendet, Fidell, Sakai & Lee. Tenant breached lease via non-payment of rent. Court has issued Writ of Possession and monetary judgment. Receipt of \$135,472 has been received from tenant and advisor will continue to attempt to collect remaining arrearage. Advisor received additional sum of \$25,000 in January, 1998.

#### **1120 19th Street**

**In Re Thomas Enterprises, Inc.** (1992) STRS Counsel: Hazel & Thomas, P.C. Tenant bankruptcy. Relief sought: \$70,000. Chapter 11, issue over 4 parking spaces which tenant gave up with lease for Suite 700. Creditors objected to disclosure statement. Once disclosure statement revised and approved, plan will be circulated for creditors approval.

#### **Southrail Business Park**

**STRS v. Song dba Woo-Ri** (1997) STRS Counsel: Procopio, Cory, Hargraves & Sabitch. Tenant has defaulted under Lease via nonpayment of rent. Tenant has vacated space and filed for Bankruptcy. Collection of arrearage unlikely but advisor will file claim on behalf of STRS in Bankruptcy proceeding.

### Riverbend

**Elbe v. STRS** (1994) STRS Counsel: Delaney, Zemetis, Donahue & Durham (appointed by insurance company) Alleged slip and fall by an employee of tenant. The complaint was served in July, 1996.

STRS Counsel has filed answer and cross-complaint against a cleaning company. Discovery is proceeding with deposition of plaintiff scheduled. STRS Counsel will assess case after deposition of plaintiff.

### **PROPERTY ADVISOR: AMB INSTITUTIONAL REALTY ADVISORS**

#### Santa Clara Industrial

**Lopez v. STRS, et al.** (1993) STRS Counsel: Jones, LaMore, Brazier and Riddle (retained and paid by insurance company). Personal injury action for alleged slip and fall due to leak on roof. Matter being handled by insurance carrier.

#### Quarry Shopping Center

**STRS v. Partyland** (1997) STRS Counsel: Schenk, Annes, Brookmen & Tepper. Tenant has requested early termination of lease which landlord has denied (lease language does not allow an early termination). Attorneys are negotiating settlement to avoid litigation.

### Non-Real Estate Investment Related Litigation

**Integra Realty Resources, etc. and et al. v. Fidelity Capital Appreciation Fund, et al.**

U.S. Bankruptcy Court of Colorado

Plaintiffs' Counsel:

STRS Counsel: Irene Tamura, Deputy Attorney General

This is a class action, of which STRS is a likely member, filed against several hundred shareholders of Integra, a company now in Bankruptcy. STRS owned shares of Integra through its Extended Market Fund. Through a series of complex mergers, buyouts culminating on January 3, 1989, in a spinoff by Integra of the stock it owned in a subsidiary, STRS became the owner of 13,649 shares of ShowBiz Pizza with an assigned value of \$156,000. (The original cost of the Integra shares which were replaced by the ShowBiz shares was \$267,000. Thus, STRS suffered a paper loss of approximately \$111,000.) This action, brought by the trustee for several creditors of Integra, maintains that the spinoff was a conveyance in fraud of the

creditors. The payer is to reverse the transaction or to reimburse Integra for the value of the fraudulently conveyed asset together with attorneys' fees. As a result of a motion brought by a majority shareholder, the Bankruptcy Court has appointed counsel for Fidelity Capital

Appreciation Fund who shall provide a defense on behalf of the class of defendant's.

There is presently before the court a settlement offer which will be voted on by the class of defendants of which STRS is a member and subject to court approval.

**CalMicro Devices Litigation** (1995) STRS Counsel: Hogan & Hartson by Joseph Hassett. The federal trial court accepted the settlement proposed by the parties. The settlement resulted in the savings of many millions of dollars in attorneys' fees. although issues involving the former CEO of the corporation may need to be litigated, the principal goal of the System -- a partial settlement that favors the shareholders at a sizable reduction in attorneys' fees - has been achieved. Accordingly the matter will be removed from this report pending scheduling for trial. Staff will revisit the matter in the future when a trial is held.

**NASDAQ Litigation** (1997) STRS Counsel: Office of the Attorney General. This is a federal class action lawsuit originally filed in 1995. STRS is not yet a party but the case is reported here because much of what is occurring at present will determine whether STRS may be included within the class. The case as currently filed alleges that the NASDAQ market makers -- large brokerage houses -- conspired to maintain an overly wide "spread" in the transaction costs associated with the trading of shares of stocks on the NASDAQ market. The spread in the transaction costs were limited to half points rather than quarter points, a practice that resulted in higher costs. The practice has been referred to as a form of price rigging and occurred from May 1989 to May 1994.

The federal trial court recently held that institutional investors may join the plaintiff class. The court has ruled that five Louisiana retirement systems will act as institutional class representatives.